

The Rights of Internally Displaced Persons (IDPs) in Situations of Wars and Conflicts



Candidate number: 8015

Supervisor: Mr. Øyvind Øyen

Deadline for Submission: December 31, 2010

Number of words: 14.000 (Max 18.000)
December 31, 2010

UNIVERSITY OF OSLO
Faculty of Law

Table of Contents

Dedication	4
Acronyms.....	5
1. Introduction.....	6
2. Defining IDPs	8
2.1 Internally Displaced Persons (IDPs)	8
2.2 IDPs v. Refugees	9
2.2.1 The 1951 Convention	9
3. IDP and Legal Instruments.....	11
3.1 The Guiding Principles on Internal Displacement	11
3.1.1 The purpose of the Guiding Principles	12
3.2 The Brookings Manual.....	15
3.3 International Humanitarian Law (IHL).....	15
3.4 International Human Rights Laws	16
3.5 Regional Documents.....	18
3.5.1 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention).....	18
4 IDPs and International organisations	21
4.1The United High Commissioner for Refugees (UNHCR) and IDPs	21
4.2 Other organs and IDPs.....	23
5. Phases of Displacement.....	25
5.1 Phase 1 – Preventing Displacement	25
5.1.1 The Kampala Convention	26
5.1.2 The Guiding Principles	28
5.1.3 International Humanitarian Law	29
5.2. During Displacement	29
5.2.1The Right to Adequate Housing in Various International Legal Instruments.....	31
5.2.2 Humanitarian Aid and Humanitarian Intervention	35

5.3 Phase 3 – Returning.....	39
5.3.1 The guiding principles.....	39
5.3.2 The Pinheiro Principles.....	40
5.3.3 International Human Rights	41
5.3.4 International Humanitarian Law	43
6. Conclusion	44
Bibliography.....	45
Books	45
Articles and Papers.....	45
Reports and Other Documents.....	46
Treaties/Statutes/Resolutions.....	47
International Court Decisions.....	48
Internet Resources	48

Dedication

To Holmar. For all your support and for never doubting me and most of all for your unconditional love.

Acronyms

AU African Union

AP Additional Protocol

GA General Assembly

GP Guiding Principles

ICCPR International Covenant on Civil and Political Rights

ICJ International Court of Justice

ICRC International Committee of the Red Cross

IDMC Internal Displacement Monitoring Centre

IDP Internally Displaced Person

IHL International Humanitarian Law

IOM International Organisation for Migration

MONUC United Nations Mission in the Democratic Republic of Congo

NATO North Atlantic Treaty Organisation

NGO Non-Governmental Organisation

SC United Nations Security Council

UN United Nations

UDHR Universal Declaration on Human Rights

UNHCR United Nations High Commissioner for Refugees

WHO World Health Organisation

1. Introduction

One of the most visible results of international and internal armed conflicts is the generation of refugees and other forcible displaced persons. The international community has been struggling to solve the refugee problem for a considerable time now. The problem has not remained the same through the decades, for example the increased problem concerning internally displaced persons (IDPs) seen in the last two decades. IDPs are people who still have not crossed an international border. When in the situation of war and armed conflicts they may be considered as refugees in theory but in practice they do not fulfil the criteria of the refugee status according to the 1951 Convention on refugees. IDPs are a group of vulnerable people in need of legal protection. As they are not entitled to the same rights as other refugees it can be hard to identify which rights they are in fact entitled to. This thesis will show what legal rights IDPs are entitled to and what rights they are not entitled to and in which legal documents these rights are enshrined. This will be done by first making a comparison of IDPs and refugees. Then the thesis will divide the displacement into three different time phases; before the displacement occurs (early signs), during displacement and as the displacement ceases to exist (return). Although the topic of IDPs in general is of great international concern it is due to limitation of time and space that this thesis shall only focus on IDPs in situations of wars and conflicts. In the chapter called during displacement, the right to adequate housing will be examined in order to find out if there is such a right and in which legal documents this right is to be found. The right to adequate housing will be used as an example in order to find out which legal documents are applicable. This approach will be used as it would be too extensive to examine all the rights of IDPs during displacement. This is done in order to find which legal documents are applicable but IDPs are entitled to many other rights than the right to adequate housing according to the legal documents mentioned in the chapters on adequate housing.

In the last decade, internal armed conflicts have caused most internal displacement, more than international armed conflicts. Parties to conflicts have failed to respect their obligations to protect civilians and displacement will continue to disrupt and destroy people's lives unless there is a continuing engagement to encourage all parties to conflict to uphold these obligations.¹

¹ Internal Displacement, Global Overview of Trends and Developments in 2008 (2009) p. 9

The object of this thesis is to examine what the aforementioned obligations are and which rights IDPs are entitled to.

The method to be used shall be a comparable approach. Legal sources will be relied on, including: conventions, resolutions, general comments, reports and case law. As the legal framework around IDPs is rescent, the work of experts in the field will be relied upon in forms of literature including books, articles, journals, reports and electronic sources.

2. Defining IDPs

2.1 *Internally Displaced Persons (IDPs)*

IDPs are persons who have fled their homes or habitual residence but have not yet crossed an international border. Because IDPs are still within the borders of the country of their home country they are not considered refugees in the legal sense and not according to the 1951 Convention². According to Article 1.A(2), of the Convention, a refugee is someone who:

As a result of events occurring before 1st January, 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

An IDP may fulfil all the criteria above, except for the most significant one which is the reason for the legal difference between refugees and IDPs. That is that IDPs have not crossed an international border, if they had they would no longer be internally displaced. There is therefore no significant difference between a refugee and an IDP. Both have been uprooted from their homes. Both seek shelter and safety elsewhere. The term IDP has been enshrined in UN and international legal documents, but it makes a legal and bureaucratic distinction where there is none.³ Despite this fact there is a big legal difference between the two groups, refugees and IDPs, and therefore the protection process is very different too. IDPs are therefore in a refugee-like situation but are not entitled to protection as refugees.

There may not be a significant difference between a refugee and an IDP but there is a significant legal difference between the two. If a person, in a refugee-like situation, flees to a different state and seeks protection it is under the state in question whether it does so or not (of course this is a simplified example as there are many laws and treaties a state has to consider first). When it comes to IDPs it is a lot more complicated since it is up to the state where the

² Convention Relating to the Status of Refugees – July 28, 1951

³ Statement by Ambassador Richard C. Holbrooke, United States Permanent Representative to the United Nations, on Refugees and Internally Displaced at Benjamin N. Cardozo School of Law, New York, (28 March 2000). (found in the article Towards a Comprehensive Approach to Protecting Refugees and the Internally Displaced by Monette Zard in Human Rights and Refugees, Internally Displaced Persons and Migrant Workers – Essays in Memory of Joan Fitzpatrick and Arthur Helton)

IDPs in fact are displaced that have the optimal power. It is up to the state, which often is in a situation of conflict, war or other pressure, whether or not they decide to protect the IDPs or whether or not they allow other states or organs to intervene.

2.2 IDPs v. Refugees

2.2.1 The 1951 Convention

When it comes to defining who is entitled to a refugee status or not, The 1951 Convention is the key legal document. This legal document also lists which rights refugees are entitled to and which legal obligations states have towards them. As mentioned above, Article 1 of the 1951 Convention provides a definition of the Term Refugee and who the term refugee shall apply to.

A person is a refugee within the meaning of the 1951 Convention as soon as he fulfils the criteria contained in the definition.⁴ This definition has not changed since the making of the 1951 Convention but the 1967 Protocol had an impact on the definition. The 1967 Protocol removed geographical and temporal restrictions from the Convention and universalized the definition of refugee status by eliminating the requirement that a refugee claim had to relate to an event in Europe occurring before 1951. This former requirement was a direct response to the Second World War. The preamble to the 1967 Protocol states that new refugee situations have arisen since the 1951 Convention was originally adopted and date requirement of 1 January 1951 would not provide an equal status to all refugees covered by the original definition in the 1951 Convention. Refugees whose flight is not motivated by persecution rooted in civil and political status are still excluded from the rights regime established by the 1951 Convention and so are IDPs.

Although the 1951 convention does only have a narrow definition of the term refugee it has a broader and looser meaning in ordinary usage according to Goodwin-Gill and McAdams:

Signifying someone in flight, who seeks to escape conditions or personal circumstances found to be intolerable. The destination is not relevant; the flight is to freedom, to safety. Likewise, the reasons for flight may be many; flight from oppression from a threat to life or liberty, flight from prosecution; flight from

⁴ Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees. Par.28

deprivation, from grinding poverty; flight from war or civil strife; flight from natural disasters, earthquake, flood, drought, famine. Implicit in the ordinary meaning of the word 'refugee' lies an assumption that the person concerned is worthy of being, and ought to be, assisted, and, if necessary, protected from the causes and consequences of flight.⁵

Therefore the refugee status does not make a person a refugee it only entitles a refugee protection someone who already was a refugee. If a refugee is declined a refugee status he or she may still be a refugee but is not entitled to protection according to the 1951 convention. The 1951 convention therefore provides a narrow definition of the term refugee and does not address the problem of internal displacement but according to Goodwyn-Gill and McAdam IDPs are in fact refugees. They are fleeing to safety but the destination is still within the state where the flight is taking place.

Since most refugees who flee their country as a result of war or conflicts do not fulfil the criteria of being persecuted because of belonging to one of the groups mentioned above it is hard to establish that they fulfil the criteria. In this context this definition is too restrictive. It does not offer protection to refugees of war or internal conflicts since that in itself is not persecution. It may however be argued that it amounts to persecution since war and conflicts threaten the right to life and security of the citizens of war and conflict zones.

It has now been established that IDPs remain inside their national borders and that it is this that distinguishes them from refugees, who are no longer protected by their national state, but by international laws and obligations. Becoming a refugee is usually a last option; sometimes it is not possible due to lack of transportation or strict border controls.⁶ It can therefore be argued that both groups are in fact refugees but one group is internally displaced and the other externally displaced.

⁵ G.S. Goodwyn-Gill (2007) p.15

⁶ ACP-EU Parliamentary Assembly (2010)

3. IDP and Legal Instruments

3.1 The Guiding Principles on Internal Displacement

For the World Summit in September 2005, the Heads of States and Government assembled in New York and recognized the Guiding Principles on Internal Displacement (here in after the Guiding Principles) as an “important international framework for the protection of internally displaced persons”.⁷ Since then many regional bodies have recognized their value and nine countries have national laws or policies which specifically refer to the Guiding Principles. The United Nations High Commissioner for Refugees (UNHCR) adopted the Guiding Principles as a normative means of addressing the issue and described them as “a useful set of standards against which to measure the protection objectives and promote dialogue with state and non-state actors of violence”.⁸

This however does not mean that the Guiding Principles are a hard-law legal framework that IDPs can rely on. According to Goodwyn-Gill “the Guiding Principles do not purport to create a new legal category of forced migrant *per se*, but rather seek to elucidate, clarify and refine existing protection norms under international law.”⁹

The Guiding Principles do therefore not introduce a formal legal definition and do not constitute a binding instrument but reflect and are consistent with international human rights and humanitarian law and analogous refugee law.¹⁰ For the purpose of the Guiding Principles IDPs are:

Persons or groups of persons who have been forced or obliged to flee or to leave their homes or habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.¹¹

⁷ Internal Displacement – Global Overview of Trends and Developments in 2008. p 19.

⁸ UNHCR. Internally Displaced Persons: The Role of the High Commissioner for Refugees. UN doc. E/50/SC/INF.2, 20 Jun. 2000, 6.

⁹ Goodwyn-Gill (2007) p. 484

¹⁰ The Guiding Principles on Internal Displacement, United Nations Commission on Human Rights, Addendum to the Report of the Representative of the Secretary-General, Mr. Francis M. Deng, UN Doc. E/CN.4/1998/53/Add. 2, February 11, 1998.

¹¹ The Guiding Principles of Internal Displacement para.2

If the Guiding Principles do not introduce a formal legal definition and are not binding, what then is the purpose of having them and what in fact do they introduce?

3.1.1 The purpose of the Guiding Principles

According to Catherine Phuong the most significant weakness of the Guiding Principles is the non-binding element. She therefore states that states and other actors are not legally bound to respect them and therefore cannot be held liable for violating them. She does however point out the pros that follow the Guiding Principles which are that had they been a legally binding instrument, they might not have been so comprehensive which may actually be seen as strength.¹² Walter Kälin has pointed out that it can be argued that the Guiding Principles are even softer than soft laws.¹³ He also points out that even if the Guiding Principles were a treaty or other form of a hard law document that would not be a guarantee for success. That can be seen with the Kampala Convention which is a hard law document that still has not been successful.

The Guiding Principles is a human rights document and most of the principles come from existing and already binding human rights documents like principles number: 1, 4, 10, 11, 12, 13, 15, 17, 19, 20, 21, 22, 23, and 29. Therefore these principles are binding through other legal documents like for example principle 13:

1. In no circumstances shall displaced children be recruited nor be required or permitted to take part in hostilities.
2. Internally displaced persons shall be protected against discriminatory practices of recruitment into any armed forces or groups as a result of their displacement. In particular any cruel, inhuman or degrading practices that compel compliance or punish non-compliance with recruitment are prohibited in all circumstances.

This principle reflects article 77.2 of protocol I to the Geneva Convention of 1949¹⁴:

¹² Phuong(2004) p. 66

¹³ Kälin (2001)

¹⁴ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977.

The Parties to the conflict shall take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years the Parties to the conflict shall endeavour to give priority to those who are oldest.

Similarly principle 4 of the Guiding Principles can be found in article 2 of the Universal Declaration on Human Rights:

Principle 4

1. These Principles shall be applied without discrimination of any kind, such as race, colour, sex, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, disability, property, birth, or on any other similar criteria.

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

The Guiding Principles are therefore a collection of already existing human rights laws and humanitarian laws and are therefore binding to parties of the relevant treaties but the Guiding Principles are not binding as such.

The Guiding Principles do not only consist of already existing laws and principles. Phuong believes that there are certain provisions of the Guiding Principles that in fact do amount to new law. One example of this is principle 15d of the Guiding Principle: “right to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk”. This may resemble the right to non-refoulement in human rights laws and refugee laws:

Art. 33 of the 1951 Convention:

1. No Contracting State shall expel or return (refouler) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

At first glance, article 33.1 of the 1951 convention and principle 15d of the Guiding Principle might seem similar if not identical although the wording is different. But in fact they are not even comparable. We have already established earlier the difference between refugees and IDPs which in essence is the IDPs geographical situation. IDPs may, just as listed in the 1951 Convention, have their life or freedom threatened on account of race, religion, nationality, membership of a particular social group or political opinion but are still not entitled to protection according to the Convention. Also the most important element is that the principle of non-refoulement applies to persons who have already crossed an internationally recognized border but IDPs are commonly defined as persons in a refugee-like situation who have not crossed the borders of their country.¹⁵ There is according to Goodwyn-Gill “no comparable right in general international law for those who have been forcibly displaced within their own State”.¹⁶ Another encouraging sign of international acceptance of the Guiding Principles on Internal Displacement are the proposals, adoptions and implementations of numerous laws, policies and decrees addressing internal displacement in all regions of the world. Almost twenty countries have enacted laws and policies based on the Guiding Principles to date while other states have acted to regulate specific problems related to displacement.¹⁷ This is a good indication of the growing significance of the GPs and perhaps an indication of that one day the GPs might in itself become hard laws or that they will be unnecessary because of the growing awareness of their necessity and growing acceptance within the international community and in states legislations worldwide. Still this shows that we as an international community still have a long way to go in order to ensure that the IDPs rights are ensured everywhere in the world.

¹⁵ Loescher (2008) p. 105

¹⁶ Goodwyn-Gill (2007) p. 485

¹⁷ Brookings p. 4

3.2 The Brookings Manual

A manual for Law and Policy Makers called Protecting Internally Displaced Persons was written by scholars and specialists on IDP matters, including Walter Kälin¹⁸, and was meant to provide guidance to national authorities seeking to prepare and enact domestic legislation and policies addressing internal displacement in their country.¹⁹ The drafting of the manual was overseen by a Steering Group of experts from leading UN and other international agencies and organizations, regional human rights bodies, and academic institutions comprising various experts in the field. I therefore believe that the manual is of great relevance when studying Internal Displacement. The manual is further relevant when studying the legal protection of IDPs since the key sources of the manual were:

1. the rules of international human rights law and international humanitarian law, as reflected in the UN Guiding Principles on Internal Displacement
2. an increasing body of IDP-specific laws and policies already enacted and implemented by national authorities in countries of every region in the world

The Manual is therefore in a way a handbook on how to use already existing laws and norms, most significantly the Guiding Principles, to address the issue of Internal Displacement.²⁰

3.3 International Humanitarian Law (IHL)

IHL is part of the body of International Law that governs the relations between states and how citizens shall be treated. IHL is applicable in situations of armed conflict, both international and non-international armed conflict. When examining the rights of IDPs, as a result of war and armed conflicts, IHL is therefore highly applicable as. IHL is the name for all sets of laws and norms, whether customary or in treaties, that have been made to limit the effect of armed conflicts for humanitarian reasons.²¹ The most influential IHL are the Geneva Conventions I-IV and their Additional Protocols I-II and the Hauge Convention as they have been ratified by a large number of countries²² and have been in force for a very long time. The Geneva

¹⁸ Walter Kälin was the Special Rapporteur on the Human Rights of Internally Displaced Persons from 2004-2010. The current Special Rapporteur is Dr. Chaloka Beyani.

¹⁹ Brookings p. 7

²⁰ The Brookings Manual is to be found here:

http://www.brookings.edu/papers/2008/1016_internal_displacement.aspx

²¹ See further: <http://www.icrc.org/eng/war-and-law/index.jsp>

²² See the beginning of every Geneva Convention or their Additional Protocols.

Conventions have for example been in force since 1950. The Geneva Conventions and the Additional Protocols do not address the issue of IDPs specially but are of relevance. They do not go in to a great depth when it comes to internal displacement but they do touch up on the issue and are relevant to all civilians in situations of international and non-international armed conflicts. As IDPs are in most circumstances civilians they fall under the protection of the Geneva Conventions and the Additional Protocols. If they on the other hand are fall under the definition combatants then they cannot fall under the definition of civilians and then they are not entitled to the same protection. The protection of civilians has a wider scope than of combatants as combatants are those taken direct part in war and therefore shall be treated as such. In order to ensure respect for and protection of the civilian population and civilian objects, the parties to an armed conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives. Accordingly they shall direct their operations only against military objectives (Additional Protocol I article 48).²³

3.4 International Human Rights Laws

Unlike IHL, International Human Rights laws are applicable at all times; no matter if there is a time of peace or war. Human Rights laws apply to all persons without discrimination and that includes discrimination on grounds of displacement. In 2004, the UN Commission called upon the Secretary-General to create a new mechanism to bring a focus on the human rights of IDPs. The Secretary-General appointed Walter Kälin as his new representative on the human rights of IDPs naming the position; Special Rapporteur on the Human Rights of Internally Displaced Persons. According to the Office of the UN High Commissioner for Human Rights, the Special Rapporteurs tasks are:

According to Human Rights Council Resolution A/HRC/RES/14/6, the Special Rapporteur is charged with:

1. engaging in coordinated advocacy in favor of the protection and respect of the human rights of IDPs,
2. continuing and enhancing dialogues with Governments as well as non-governmental organizations and other actors,
3. strengthening the international response to internal displacement, and

²³ See further: Chapter 5 on Protection of the Civilian Population in The Handbook of International Humanitarian Law edited by Dieter Fleck.

4. mainstreaming the human rights of IDPs into all relevant parts of the UN system.

He was also requested to build upon the work of his predecessor in raising awareness of IDP rights issues, promoting and disseminating the Guiding Principles on Internal Displacement (E.CN.4/1998/53/Add.2) at the national, regional and international levels, undertaking country missions, convening national and regional seminars, providing support for capacity building of non-governmental organizations and other relevant institutions, and conducting policy-oriented research.²⁴

In late 2010, Walter Kälin was replaced by Dr. Chaloka Beyani.

All human rights instruments can be of relevance in situations of internal displacement. For example; the Convention on the Rights of the Child 1989 applies to child IDPs, the International Convention on the Elimination of All Forms of Racial Discrimination 1965 applies to IDPs who are discriminated against on grounds of race, the International Covenant on Economic, Social and Cultural Rights applies to IDPs whose economic, social and cultural rights are violated. The Universal Declaration on Human Rights 1948 (UDHR), is one of the oldest international human rights legal instruments. It was adopted and proclaimed by the General Assembly of the UN and is probably the best known and most cited human rights document in the world and probably a role model when it comes to drafting more specific human rights legal instruments. The UDHR does not differentiate between groups of people, like for example the Convention on the Rights of the Child, but is applicable to all people. The UDHR therefore applies to IDPs and affects their rights in many ways. Most significantly the UDHR lists that “everyone has the right to a standard of living adequate for the health and well-being of himself and of his family including food, clothing, housing and medical care and necessary social services and the right to the security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control”.²⁵ In most circumstances of internal displacement, IDPs have to leave their homes in a hurry; leaving their homes and their belongings. Article 25.1 of the UDHR is therefore of great importance to IDPs as they lack housing, most likely clothes, food, security, medical care etc. One very important right that IDP children may miss, while displaced, is the right to

²⁴ See further: Office of the United Nations High Commissioner for Human Rights. Introduction to the mandate of the Special Rapporteur of internally displaced persons, Dr. Chaloka Beyani. Available at: <http://www2.ohchr.org/english/issues/idp/mandate.htm>

²⁵ UDHR article 25.1

education. According to article 26 of the UDHR IDPs have the right to education, even if they are displaced.

3.5 Regional Documents

Three regional legal instruments offer a widened scope of the term refugee. The term regional means that it applies to the region it refers to but the 1951 Convention applies to all the states that have ratified the convention. These regional conventions are: 1969 African Union Convention Governing the Specific Aspects of Refugee Problems in Africa (The 1969 AU Convention), the 1984 Cartagena Declaration on Refugees and the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention). Although the two conventions mentioned first offer a widened scope of the term refugee, they still only apply to those who have already crossed an international border. Therefore the Kampala Convention is the only one, out of the three, that applies to IDPs and as the name indicates, the Kampala Convention specially addresses IDPs not refugees.

3.5.1 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)

The Kampala Convention was adopted by the African Union (AU) in October 2009. As the name indicates (Convention) this is a legally binding document, unlike the Guiding Principles, and it can therefore have legal consequences for the parties to the agreement if they violate the Convention. The binding element of the Kampala Convention has been described as an historic accomplishment as it is the first legally binding regional instrument in the world to impose on states the obligation to protect and assist IDPs.²⁶ However, to enter into force and become legally binding, the Convention has to be ratified by 15 countries.²⁷ The Kampala Convention has been signed by 29 of the 53 AU member states but only been ratified by Uganda and Sierra Leone. As the Kampala Convention is a regional document it only applies to IDPs within the states that are parties to the Convention.

²⁶ The Internal Displacement Monitoring Centre. The Kampala Convention: Making it real. Available at: <http://www.internal-displacement.org/kampala-convention>

²⁷ The Internal Displacement Monitoring Centre. The Kampala Convention: Making it real. Available at: <http://www.internal-displacement.org/kampala-convention>

If the Convention has been signed by such a high number of member states, how come they have not ratified it? There is not a simple answer to this question but if we look at the current situation in many African countries it can give us an indication. Hypothetically; why should for example a state like Somalia ratify the Convention if they are currently violating it by not being able to provide IDPs with the rights set forth in the Convention? If that was the case, hypothetically, then Somalia would already be in violation of international laws as Somalia is a member of the Geneva Conventions as the Kampala Convention contains numerous important provisions of IHL, which bind both State and non-state armed groups.²⁸ The Kampala Convention also builds on the Guiding Principles and contributes to their universal authority as well as to their evolution from soft law to hard law standards.²⁹ IDPs are defined in the Kampala Convention in the same way as in the Guiding Principles:

[...] persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.³⁰

The Convention provides standards for protection of people from arbitrary displacement, the protection of IDPs while they are displaced and durable solutions to their displacement. It obliges both government and armed groups to protect and assist IDPs without any discrimination and to assist local communities that host IDPs and to facilitate humanitarian organisations access to IDPs and delivery of relief supplies. The Kampala Convention lists various human rights that persons are entitled to in situations of displacement. According to the Convention all persons have the right to be protected against arbitrary displacement³¹ and the state shall provide IDPs with adequate humanitarian assistance which shall include food, water, shelter, medical care and other health services, sanitation, education, and any other necessary social services.³² The Kampala Convention also says that special protection shall be provided for IDPs with special needs such as females, pregnant women, mothers with young

²⁸ See: Ojedas. The Kampala Convention on Internally Displaced Persons: Some International Humanitarian Law Aspects. Available at: <http://rsq.oxfordjournals.org/content/29/3/58.full> (last visited 22 July 2010)

²⁹ See: Solomon. An African Solution to Internal Displacement: AU Leaders Agree to Landmark Convention. Brookings-Bern Project on Internal Displacement, 23 Oct. 2009, available at: http://www.brookings.edu/papers/2009/1023_african_union_solomon.aspx (last visited 22 July 2010).

³⁰ Kampala Convention article 1.

³¹ Kampala Convention article 4(4).

³² Kampala Convention article 9(2)b.

children, the elderly and IDPs with disabilities.³³ The Kampala Convention is therefore quite specific when it comes to listing human rights and protection of IDPs. In a way it is an extension of already existing human rights instruments as it is a collection of various rights that IDPs are already entitled to, according to various international instruments, and puts them in to one legal document.

The most significant part that the Kampala Convention brings is the fact that it obliges governments to provide compensation for the harm suffered by persons as a result of their displacement.³⁴ According to Augustine Mahiga, the Secretary-Generals special representative for Somalia, violence remains the main impediment to human rights in Somalia. He says that it should be noted that without peace in south-central Somalia “it will be difficult to envisage profound and lasting changes in the precarious human rights situation there, especially with regard to the right to life, and even basic human rights such as the right to food, shelter, education and health”.³⁵ Therefore the question is perhaps not why has Somalia not ratified the Convention but why should they when they know that they are not fulfilling the obligation?

³³ Kampala Convention article 9(2)c.

³⁴ See: Essoungou. Africa's displaced people: out of the shadows. Available at: <http://www.un.org/ecosocdev/geninfo/afrec/vol24no1/displaced-people.html> (last visited 20 September 2010)

³⁵ Friends of the United Nations. Increasing number of Somali IDPs. Available at: <http://www.fotuneurope.org/?p=1180> (last visited 20 September 2010)

4 IDPs and International organisations

4.1 The United High Commissioner for Refugees (UNHCR) and IDPs

The protection of IDPs was not a part of UNHCR's original mandate. Article 9 of UNHCR's statute, however, allows for the possibility that, over time, this mandate might be extended if authorized by the General Assembly and if there were sufficient funds available.³⁶ Article 9 states that "the High Commissioner shall engage in such additional activities, including repatriation and resettlement, as the General Assembly may determine, within the limits of the resources placed at his disposal".³⁷

Back in the 70's the UNHCR was able to selectively assist refugees who did not fulfil the criteria of the 1951 Convention by recognizing them as *prima facie* refugees or by using General Assembly (GA) resolution to assist those who did not fall directly within the mandate of UNHCR. This way UNHCR occasionally offered protection to those described as "displaced persons".³⁸ As an example, the Office offered protection to the internally displaced in Sudan 1972, Guinea-Bissau, Angola and Mozambique in 1974, and Vietnam and Laos in 1975.³⁹ Since then the GA has reaffirmed UNHCR's role with regard to the IDPs with a series of GA resolutions. In Resolution 48/116 of 20 December 1993, GA expressed support for the High

Commissioner's efforts, reiterated the prerequisites for involvement formulated in an April 1993 Inter-office Memorandum on „UNHCR's Role with Internally Displaced Persons“. This stressed out that work with IDPs was "a dynamic and rapidly evolving issue," and outlined the essential prerequisites as:

- Authorisation from the General Assembly, the UN Secretary-General or another competent principal organ of the UN;
- Consent of the concerned State or, where applicable, other relevant entities;
- The relevance of the UNHCR's expertise to assist, protect and seek solutions for the displaced;
- The need for UNHCR's activities to remain within the limits of resources at its disposal.⁴⁰

³⁶ Loescher (2008) p. 106

³⁷ Statute of the UNHCR

³⁸ Loescher (2008) p. 106

³⁹ Mattar (2005) p. 3

⁴⁰ Mattar (2005) p. 4

Today, the foundation for UNHCRs engagement with IDPs is widely attributed to United Nations General Assembly Resolution 53/125 (1998), paragraph 16 of which reaffirms the⁴¹: “support for the role of the Office of the High Commissioner in providing humanitarian assistance and protection to internally displaced persons, on the basis of specific requests from the Secretary-General or the competent organs of the United Nations and with the consent of the State concerned, taking into account the complementarities of the mandates and expertise of other relevant organizations”, and emphasizes that “activities on behalf of internally displaced persons must not undermine the institution of asylum.” The resolution thus repeats the main terms of engagement set out in earlier GA resolutions. The situations in which UNHCRs could engage are not circumscribed and the importance of UNHCR working in partnership with other relevant organizations is particularly emphasized. In June 2010 the UNHCR published a handbook called “Handbook for the Protection of Internally Displaced Persons”. In this handbook it says “This Handbook is primarily intended for use by staff, particularly field staff, of international organizations engaged in responding to internal displacement. This includes not only human rights and protection officers but also humanitarian and development actors more broadly. Protection is a cross-cutting issue that all staff should address and promote.” It also says that the main responsibility of IDP protection rests with the national authority of the country in question and even though the authority is unable or unwilling to protect its nationals the role of international actors is to reinforce, not replace, national responsibility. The handbook therefore clearly indicates that the burden of protection lies in the hands of the state and that other actors can only provide complementary protection. The handbook has a list of national responsibilities in situations of internal displacement but it should be kept in mind that the handbook is only a handbook and does not have any elements of hard-law.

In addition to ensuring the protection of rights in accordance with international law, national responsibility in situations of internal displacement entails:

1. preventing displacement and minimizing its adverse effects;
2. raising national awareness about the problem;
3. collecting data on the number and condition of IDPs;
4. supporting training on the rights of IDPs;

⁴¹ UN High Commissioner for Refugees, The Protection of Internally Displaced Persons and the Role of UNHCR

5. creating a legal framework upholding the rights of IDPs;
6. developing a national policy on internal displacement;
7. designating an institutional focal point on IDPs;
8. encouraging national human rights institutions to address internal displacement;
9. ensuring that IDPs participate in decision making;
10. supporting durable solutions;
11. allocating adequate resources to address internal displacement; and
12. cooperating with the international community when national capacity is insufficient.

It is hard to imagine that states in a situation of war and conflict would in practise follow all of these guidelines. Since according to the United Nations General Assembly Resolution 53/125 (1998), paragraph 16, the UNHCR cannot get involved unless they have the consent of the state in question, it can therefore be concluded that the UNHCRs role in IDPs situation is only complementary.

4.2 Other organs and IDPs

The overall approach of the UN to safeguard the rights of IDPs has largely been ad hoc and driven more by the personalities and convictions of individuals than by an institutional, system wide agenda. Furthermore the lack of political and financial support from both organisations and government has worked to undermine staff efforts in the field.⁴² For the last ten years or so, UN agencies have become increasingly involved in providing food, medicine and shelter to IDPs but have fallen short in assuring respect for safety and human rights.⁴³ UN agencies therefore struggle with various hindrances when it comes to assisting IDPs. However there are various agencies, both UN agencies and others, have started to express an interest in the issue of internal displacement.⁴⁴ Non-UN agencies involved are for example the International Committee of the Red Cross (ICRC), the International Organisation for Migration (IOM) and the World Health Organisation (WHO). These agencies as well with most UN agencies became involved with IDPs either because they were already intervening in situations producing displacement or because their expertise and operational capacity

⁴² Bagshaw (2005)

⁴³ Bagshaw (2005)

⁴⁴ Phuong (2004) p. 92

directly relates to the specific IDP need that calls for their involvement. These agencies therefore saw their programmes with IDPs as a natural extension as they did not initially endeavour to formulate any specific IDP policy. However, as there has been a growing that the international response to the problem of internal displacement is to be ad hoc and uncoordinated there has been more pressure to clarify each agency's role with regard to IDPs.⁴⁵

⁴⁵ Phuong (2004) p. 92-93

5. Phases of Displacement

In order to determine the rights of IDPs this paper will put displacement into three different phases. The Guiding Principles have a section on principles relating to protection from displacement⁴⁶, principles relating to protection during displacement⁴⁷ and principles relating to return, resettlement and reintegration⁴⁸. The Kampala Convention, similarly to the Guiding Principles, has an article on obligations of states parties relating to protection from internal displacement⁴⁹, an article on obligations of states parties relating to protection and assistance during displacement⁵⁰ and an article on obligations of states parties relating to sustainable return, local integration or relocation.⁵¹ By taking this approach, it is easier to find out whether IDPs have any legal rights and what those rights are.

The three phases used hereafter will be as follows: Preventing displacement, during displacement and as displacement ceases to exist.

5.1 Phase 1 – Preventing Displacement

*Provided the international community is aware of a crises building up, preventive measures can be taken. Prevention relates to the underlying reasons for instigating flight. Poverty, hunger, shortage in resources, environmental disturbances, political suppression and lack of respect for human rights are, beyond doubt, underlying causes for flight.*⁵²

This chapter will show that there are in fact some legal measures states and other organs can take in order to take steps towards preventing internal displacement. This chapter will further show that these measures are mostly in the form of soft laws, regional documents or other guiding tools. These legal tools are: the Guiding Principles, the Kampala Convention and the Brookings Manual (here in after the Manual) and this chapter will be divided into chapters on each tool.

⁴⁶ Section II of the Guiding Principles

⁴⁷ Section III of the Guiding Principles

⁴⁸ Section V of the Guiding Principles

⁴⁹ Article 4 of the Kampala Convention

⁵⁰ Article 9 of the Kampala Convention

⁵¹ Article 11 of the Kampala Convention

⁵² Norwegian Refugee Council: Comprehensive Refugee Policy. p 1.

5.1.1 The Kampala Convention

The Kampala Convention is the first legally binding regional instrument in the world to impose on states the obligation to protect and assist IDPs and therefore has rightfully been described as a historic accomplishment.⁵³ The Convention contains numerous important provisions of International Humanitarian Law (IHL). These provisions bind both State and non-state armed groups and do not only include the obligation to protect IDPs and to provide them with assistance but also norms and measures ensuring that forced displacement is prevented and norms that clearly prohibit arbitrary displacement in violation of IHL.⁵⁴ The Kampala Convention is for many reasons relevant when discussing preventive measures when it comes to displacement. Most importantly it is relevant because, according to the Convention, all persons have the right to be protected against arbitrary displacement and shall include individual or mass displacement of civilians in situations of armed conflict (article 4.4.b). In the preamble of the Kampala Convention it says that the Heads of State and Government of the Member States of the African Union;

Determined to adopt measures aimed at preventing and putting an end to the phenomenon of internal displacement by eradicating the root causes, especially persistent and recurrent conflicts as well as addressing displacement caused by natural disasters, which have a devastating impact on human life, peace, stability, security, and development;

Recalling the lack of a binding African and international legal and institutional framework specifically, for the prevention of internal displacement and the protection of and assistance to internally displaced persons;

The Articles of the Kampala Convention all have names. Article 2 is called: Objectives and in paragraph a it says that the objective of the Kampala Convention is to promote and strengthen regional and national measures to prevent or mitigate, prohibit and eliminate root causes of internal displacement as well as provide for durable solutions. Paragraph b continues by saying that one of the objectives is also to establish a legal framework for preventing internal

⁵³ The Internal Displacement Monitoring Centre. <http://www.internal-displacement.org/kampala-convention>

⁵⁴ See: Ojedas. The Kampala Convention on Internally Displaced Persons: Some International Humanitarian Law Aspects. Available at: <http://rsq.oxfordjournals.org/content/29/3/58.full> (last visited 22 July 2010)

displacement, and protecting and assisting IDPs in Africa. Paragraph d continues further by saying that another objective of the Convention is to provide for the obligations and responsibilities of States Parties, with respect to the prevention of internal displacement and protection of, and assistance, to IDPs. There is therefore no doubt that the Kampala Convention's objectives are amongst other to take various measures in order to prevent internal displacement. Article 3 is called: General Obligations Relating to States Parties. In its paragraph 1.a and b it says as follows: "States Parties undertake to respect and ensure respect for the present Convention. In particular, States Parties shall: a. Refrain from, prohibit and prevent arbitrary displacement of populations: b. Prevent political, social, cultural and economic exclusion and marginalisation, that are likely to cause displacement of populations or persons by virtue of their social identity, religion or political opinion". States Parties can, and shall, take various measures to protect their citizen from displacement and avoid conditions that might lead to arbitrary displacement. States Parties shall devise early warning systems and establish and implement disaster risk reduction strategies, emergency and disaster preparedness and management measures and, when necessary, provide immediate protection and assistance to IDPs (article 4.2). In order to do this State Parties may seek the cooperation of international organisations or humanitarian agencies, civil society organisations and other relevant actors (article 4.3). The most significant article of the Kampala Convention is perhaps its article 4.6. That article says that States Parties shall declare as offence punishable by law acts of arbitrary displacement that amount to genocide, war crimes or crimes against humanity. States shall therefore not only take preventive measures but also declare those acts earlier mentioned punishable by law. It is therefore not unlikely that in the future, once the Convention has come in to force, that individuals and groups responsible for arbitrary displacement can be taken to court and held responsible.

It is clear that the Kampala Convention prohibits arbitrary displacement altogether through various articles and its preamble and states parties are obliged to take measures to avoid conditions that might lead to displacement. The Convention offers many different provisions of protection for persons from displacement and even declares acts of arbitrary displacement as punishable. Unfortunately the Convention has not yet come to force, but that does not mean that the States Parties are not bound by it as it reflects in many ways the Geneva Conventions.⁵⁵ Article 12, of the Kampala Convention, states that IDPs shall be provided with

⁵⁵ See further: Ojedas. The Kampala Convention on Internally Displaced Persons: Some International Humanitarian Law Aspects. Available at: <http://rsq.oxfordjournals.org/content/29/3/58.full> (last visited 22 July 2010)

just and fair compensation. Although this article is relevant to this chapter it is more relevant to the last phase, namely when displacement ceases to exist.

5.1.2 The Guiding Principles

Section II of the Guiding Principles is on protection from displacement. According to the Guiding Principles the most important step a state can take as a preventive measure is to respect international law, in particular human rights laws and international humanitarian laws. Principle 5: “All authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons”.

The Brookings Manual supports this by saying that the most important measure in preventing Internal Displacement is as set out in Principle 5 of the Guiding Principles.

Therefore, according to the Manual, by fully respecting human rights and humanitarian laws, states are already taking steps towards preventing Internal Displacement. The Manual goes further by stating that the review of relevant national laws and policies to ensure that they incorporate basic international law protections as set out in the Guiding Principles should be included when taking concrete steps to prevent and mitigate displacement.⁵⁶

The right to be protected against arbitrary displacement from his or her home or place of habitual residence shall apply to every human and includes displacement in situations of armed conflict unless the security of civilians involved or imperative military reasons so demand (Principle 6.1 and 6.2.b). The right not to be arbitrarily displaced is therefore provided for in the Guiding Principles with the exception of security reasons or imperative military reasons.

⁵⁶ Brookings p. 23.

5.1.3 International Humanitarian Law

Forced displacement is prohibited under treaty and customary IHL, whether within the borders of a country or across international borders.⁵⁷ Regardless of their motive, individual or mass forcible transfer, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, is prohibited (Geneva Convention IV article 49). There are however exceptions to this rule. Occupying power may undertake total or partial evacuation of a given area if the security of the population or imperative military reasons so demand. Such evacuation may not involve the displacement of protected persons outside the bounds of the occupied territory except when for material reasons it is impossible to avoid it. In such circumstances, the IDPs shall be transferred back to their homes as soon as the hostilities in question have ceased (Geneva Convention IV article 49). This is also to be found in Article 17 of APII which says that the displacement of civilian population is prohibited unless the security of the civilians involved or imperative military reasons so demand. Arbitrary displacement is therefore prohibited under IHL under all circumstances unless in circumstances where it cannot be avoided in order to protect the civilians. There have to be good reasons for arbitrary displacement according to IHL that involve the security of IDPs or imperative military reasons. This is similar as to the Guiding Principles above. If not avoided measures shall be taken to provide civilian population with satisfactory conditions of shelter, hygiene, health safety and nutrition (APII article 17).

5.2. During Displacement

Imagine having to leave your home in a hurry, bringing hardly anything with you. Imagine building a flimsy shelter, out of old rugs, branches, and, if you are lucky, plastic tarps. Imagine having no running water. Imagine not knowing if you will find food for your children tomorrow. Imagine not being able to put them into school.

⁵⁷ See: Ojedas. The Kampala Convention on Internally Displaced Persons: Some International Humanitarian Law Aspects. Available at: <http://rsq.oxfordjournals.org/content/29/3/58.full> (last visited 22 July 2010)

*Imagine fearing your daughter will be raped every time she goes to the toilet. Imagine that this is your everyday ordeal for months, years, decades.*⁵⁸

The Kampala Convention in its essence is a reminder to state parties to abide already binding international humanitarian law instruments and obligations assumed under various human rights. As mentioned earlier and article 3 of the Guiding Principle underlines, it is not the international community that is primarily responsible to provide protection and humanitarian assistance to IDPs within their jurisdiction. Arbitrary displacement is in first instance prohibited (Guiding Principles 5-7). Once displaced, IDPs are entitled to various rights even though IDPs do not enjoy protection as refugees as they do still have rights as human beings like the right to “live in satisfactory conditions of dignity, security, sanitation, food, water, health, and shelter” as defined in article 7.5.c of the Kampala Convention where it says that members of armed groups shall be prohibited from denying these rights to IDPs. These rights are also to be found in various other international documents as for example General Comment No. 15 of the UN Committee on Economic, Social and Cultural Rights which confirms the right to water. There it says that: “All human beings are born free and equal in dignity and rights. Everyone is entitled to all the rights and freedoms set forth in the universal Declaration of Human Rights, without distinction of any kind, such as race, creed, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Everyone has the right to life, liberty and security of person.”⁵⁹

Catherine Phuong states that work with IDPs must be based on the relevant international legal provisions as reflected in the Guiding Principles on Internal Displacement.⁶⁰

As explained earlier, people have the right to be protected from being arbitrarily displaced⁶¹ and authorities and international actors shall take appropriate measures to avoid conditions that might lead to displacement.⁶² This chapter will focus on the legal instruments applicable when states or other international actors have for some reason failed to prevent displacement and the displacement has already occurred. States have a duty to take all measures to minimise displacement and its adverse effects where no alternatives to displacement exist (Guiding Principle 7.1) This chapter will be based up on a human rights approach to protect

⁵⁸ Gabaudan (2010)

⁵⁹ General Comment No 15 of the UN Committee on Economic, Social and Cultural Rights is to be found on the following webpage: http://www2.ohchr.org/english/issues/water/docs/CESCR_GC_15.pdf

⁶⁰ Phuong (2004) p. 237

⁶¹ Guiding Principle 6

⁶² Guiding Principle 6

IDPs. Since it has been established that the right not to be arbitrarily displaced is a human right and the displacement therefore a human rights violation it seems appropriate to take this approach in order to protect IDPs until they are able to return which the 3rd and last chapter will touch upon. Once displaced, IDPs retain a broad range of rights. It is therefore not possible to touch upon all of them in such a short thesis. This chapter will therefore show how the right to adequate housing (shelter) applies to IDPs during displacement and show that this right can be found in various legal instruments. Listing all the human rights that IDPs are entitled is not restrictive enough for the scope of this thesis. Therefore this chapter will mention various different human rights legal instruments that apply to IDPs by showing how the right to adequate housing applies to IDPs in situations of wars and armed conflicts. The reason for choosing this specific right is that being internally displaced means that a person has for some reasons been forced to leave his or her house but is still within the boarder of the country where he or she had a home. Therefore we can immediately identify certain human right that IDPs might lack, namely; the right to adequate housing. Then the chapter will go through measures such as humanitarian assistance and humanitarian intervention as a last resort.

5.2.1The Right to Adequate Housing in Various International Legal Instruments

5.2.1.1 The Pinheiro Principles

The Pinheiro Principles is another name for the Principles on Housing and Property Restitution for Refugees and Displaced Persons. They were endorsed by the United Nations Sub-Commission on the Promotion and Protection of Human Rights on 11 August 2005. They are named after Sub-Commission Special Rapporteur on Housing and Property Restitution, Paul Sérgio Pinheiro. “The Pinheiro Principles provide restitution practitioners, as well as States and UN an others agencies, with a consolidated text relating to the legal, policy, procedural, institutional and technical implementation mechanisms for housing and property restitution. As such, the Principles provide specific policy guidance regarding how to ensure the right to housing and property restitution in practice and for the implementation of restitution laws, programmes and policies, based on existing international human rights,

humanitarian refugee and national standards.”⁶³ Therefore the Pinheiro Principles are not laws as such but the Pinheiro Principles are based on already existing international human rights, humanitarian, refugee and national standards. Various international organisations and agencies published a Handbook that much like the Handbook on Procedures and Criteria for Determining Refugee Status⁶⁴ is supposed to give guidance when it comes to interpreting the Pinheiro Principles. It has already been established in the beginning of this chapter and in earlier chapters that refugee laws do not apply to IDPs but so do humanitarian and human rights laws and other soft-laws.

The Pinheiro Principle’s key objective is to assist relevant national and international actors to address the legal and technical issues linked to the housing and property restitution rights of refugees and IDPs.⁶⁵ The Pinheiro Principles also touch upon the issue of the right to shelter during displacement. Therefore the only human right during displacement that the Pinheiro Principles apply to is the right to shelter, but the principles are relevant to all phases of displacement as the right to adequate housing applies to everyone (Pinheiro Principle 8.1).

According to its principle 8.1 and 8.2, everyone has the right to adequate housing and states should adopt positive measures aimed at alleviating the situation of refugees and IDPs living in inadequate housing. The principle therefore first of all declares that IDPs have a right to adequate housing and in situations where that has not been provided the state should take measures in improving inadequate housing situation of IDPs. As earlier mentioned the Pinheiro Principles are not laws and therefore not binding as such.

5.2.1.2 The Kampala Convention

Article 9 of the Kampala Convention imposes obligations on its parties to protect and assist IDPs during internal displacement. Article 9.2.b. lists various different humanitarian assistance that states parties shall provide IDPs with amongst shelter. Other articles go further and list what else shall be included when providing shelter. In article 9.2.a. it says that states parties shall take necessary measures to ensure that IDPs live in satisfactory conditions of safety, dignity and security. Article 9.2.g says that states parties shall “respect and maintain the civilian and humanitarian character of the places where internally displaced persons are

⁶³ Housing and Property restitution for Refugees and Displaced Persons: Implementing the “Pinheiro Principles”. p 11.

⁶⁴ The Handbook on Procedures and Criteria for Determining Refugee Status gives guidance on how to determine whether a person shall be granted a refugee status or not and can be found on the official website of UNHCR.

⁶⁵ Housing and Property Restitution for Refugees and Displaced Persons p. 16

sheltered and safeguard such locations against infiltration by armed groups or elements and disarm and separate such groups or elements from internally displaced persons”. The Kampala Convention does thus not only impose obligations on states parties to provide IDPs with shelter but also safety in the location of such shelters along with satisfactory conditions which do not infringe with IDPs dignity. The Kampala Convention does therefore impose obligations on states that are parties to the Convention to provide IDPs with adequate housing but as earlier mentioned the Kampala Convention applies within member states of the African Union. However, as earlier mentioned, it has not come into force yet.

5.2.1.3 The Guiding Principles

Section III of the Guiding Principles is on principles relating to protection during displacement. Shelter is also mentioned in section II on protection from displacement where it says that proper accommodation should be provided to the displaced person. If IDPs are provided with accommodation where they feel safe when the displacement occurs then the IDPs might not have to travel as far as in most cases. If governments in first instance make sure that IDPs have safe and adequate accommodation then IDPs could feel safe until they know for sure if they can return or not then it would mean that IDPs would not have to look any further for shelter and safety. In principle 10.2.d. it says that IDPs shall be protected against attacks against their camps or settlements. This article therefore imposes obligations on states to take measures to prevent such attacks. It also says that IDPs have the right to move freely in and out of camps or other settlements.⁶⁶ They can therefore not, according to the Guiding Principle, be forced to stay in a camps or settlements if they wish not to and they have the right to seek safety in another part of the country as well as the right to leave their country and seek asylum in another country.⁶⁷ All IDPs have the right to an adequate standard of living and shall be ensured safe access to basic shelter and housing.⁶⁸ The Guiding Principles and the Kampala Convention do in most ways ensure IDPs with the same rights to shelter or adequate housing during displacement. Both documents impose on states that they should not only provide IDPs with shelter and housing but also that it shall be safe and ensure that they are not targets of attacks.

⁶⁶ Guiding Principle 14.2

⁶⁷ Guiding Principle 15

⁶⁸ Guiding Principle 18

5.2.1.4 International Human Rights and International Humanitarian Law

Article 25.1 of the Universal Declaration on Human Rights (UDHR) was the first to recognize the right to adequate housing as a human right. Article 25 includes the right of everyone to a standard of living adequate for the health and well-being of himself and his family including housing in the event of lack of livelihood in circumstances beyond his control. Since the UDHR the right to adequate housing has been included in various human rights standards such as Article 11.1 of the International Covenant on Economic, Social and Cultural Rights. Article 11.1 says that the States Parties recognise the right of everyone to an adequate standard of living for himself and his family, including housing. The International Convention on the Elimination of All Forms of Racial Discrimination of 1965 similarly says that the States Parties shall guarantee everyone, without any distinction of race, colour, nationality or ethnicity equality before the law in the enjoyment of the right to housing (article 5). The right to adequate housing is also found in various other International Human Rights instruments such as: Convention on the Elimination of All Forms of Discrimination Against Women(1979) in article 14(2)h and the Convention on the Rights of the Child(1989) article 27(3) and more. These would all apply to IDPs. The conventions mentioned in this chapter do not address IDPs especially and do therefore not especially apply to them but apply to them nevertheless because they apply to all human beings.⁶⁹

5.2.1.5 The Geneva Conventions and the Additional Protocols

The Geneva Conventions and its APs do not mention IDPs especially either. However they do mention the civilians and, as earlier discussed, IDPs are civilians as long as they do not take part in hostilities. APII states that in situations where arbitrary displacement cannot be avoided, the civilian population affected by it shall be provided with satisfactory conditions of shelter, hygiene, health, safety and nutrition (article 17). The Geneva Convention IV states that where arbitrary displacement cannot be avoided, protected persons affected by it shall be ensured; to the greatest practical extend with proper accommodation and that the removals are effected in satisfactory conditions of hygiene, health, safety and nutrition.

⁶⁹ Of course the Convention on the Elimination of All Forms of Discrimination Against Women are addressed to women and in the Convention of the rights of the Child is addressed to children. But these Conventions apply to all women and all children.

5.2.2 Humanitarian Aid and Humanitarian Intervention

From an international law perspective, the responsibility for IDPs lies with the territorial state since other states and organisations have to respect the sovereignty and the principle of non-intervention. As a crucial element of sovereignty, it is the governments of the states where IDPs are found that have the primary responsibility for their assistance and protection. The principle of state sovereignty means that each State has the right to regulate its own public order and to that end it is entitled to legislate for everyone within its territory⁷⁰. “State sovereignty implies responsibility, and the primary responsibility for the protection of its people lies with the state itself.”⁷¹ Intervention in the internal affairs of states is considered as illegal in customary international law.⁷² In the Nicaragua case, the International Court of Justice (ICJ) held that the right of every sovereign state to conduct its affairs without outside interference is “part and parcel of customary law”⁷³. The ICJ even went further and held that the prohibition of the use of force is *jus cogens* which means that it is non-derogable. This fact is quite ironic when it comes to terms with the protection of IDPs since in practice, the displacement often occurs as a result of civil conflict and when the authority is itself in dispute and is unwilling or unable to provide protection and assistance to IDPs.⁷⁴

The primary responsibility therefore lies with the state itself and the international community's role is complementary.⁷⁵ Furthermore, IDPs have the right to request and to receive humanitarian from these authorities (General Principle 3.2). However national authorities may for various reasons not be capable of providing such assistance or aid. In such cases, which are not uncommon, international humanitarian organizations and other appropriate actors have the right to offer their services in support of the IDPs. An offer of that kind should not be regarded as unfriendly or as an interference in a state's internal affairs and should be considered in good faith. In a case where the state is unable or unwilling to provide humanitarian assistance a consent thereto should not be arbitrarily withheld (General Principle 25.2). In order to provide assistance or aid, there has to be free passage and persons engaged in the provision should be granted unimpeded access to the IDPs (General Principle 25.3)

⁷⁰ International Law (2006) p. 338

⁷¹ International Commission on State Sovereignty (2001), *The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty*, xi). Available at www.iciss.ca/pdf/Commission-Report.pdf

⁷² Udombana (2005) p.1149-1200

⁷³ *Nicaragua v United States*

⁷⁴ Goodwyn-Gill (2007) p. 481

⁷⁵ See further: Office of the United Nations High Commissioner for Human Rights. Question and Answers about IDPs. Available at: <http://www2.ohchr.org/english/issues/idp/issues.htm>

furthermore persons engaged in humanitarian assistance, their transport and supplies should be respected and protected and they should not be the object of attack or other acts of violence (General Principle 26). Article 27 of the Geneva Convention IV expresses that humanitarian assistance can only be provided by a neutral state with the consent of the state in need in cases of international armed conflict. Article 3 of Geneva Convention I-IV expresses the same idea for non-international armed conflicts. It has now been established that there is a legal basis for humanitarian assistance. Then there is the question of what such assistance shall entail. According to International Humanitarian law, persons who are not or no longer taking direct part in hostilities have the right to humanitarian assistance. This includes IDPs as long as they are not participating directly in hostilities. “Humanitarian assistance includes the right to receive essential goods such as food, water, medicine, medical help and shelter. It also covers the right to basic education.”⁷⁶ The Additional Protocol II (APII)⁷⁷ also applies to non-international armed conflicts. Its article 18.2 says in a concise way: “If the civilian population is suffering undue hardship owing to a lack of the supplies essential for its survival, such as food-stuffs and medical supplies, relief actions for the civilian population which are of an exclusive humanitarian and impartial nature and which are conducted without any adverse distinction shall be undertaken”. It later adds a condition: “subject to the consent of the High Contracting Party concerned”. It seems therefore that there is a consent in the international community that humanitarian assistance in cases of international and non-international armed conflict can be essential for the livelihood of civilians and there included IDPs. However there seems that there is no legal basis for such assistance without the consent of the state in question. Often protection activities are undertaken in situations where access to the IDPs is difficult, if not denied entirely by governmental authorities or insurgent groups in control of the areas concerned.⁷⁸ All too often physical access to IDPs is hindered by domestic political considerations and the first step then is to negotiate access to them.⁷⁹ The SC has emphasised the “importance of safe and unhindered access of humanitarian personnel to civilians in armed conflict, including refugees and IDPs”.⁸⁰

⁷⁶ The Handbook of International Humanitarian Law (2008) p. 269

⁷⁷ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-international Armed Conflicts (Protocol II) – June 8, 1977.

⁷⁸ Phuong (2004) p. 125

⁷⁹ See: Report of the Secretary-General to the Security Council on the Protection of Civilians in Armed Conflict, S/2001/331, 30 March 2001, para. 22.

⁸⁰ SC Res. 1265, 17 September 1999, para 7.

As mentioned above, the SC council cannot intervene without the consent of the state concerned and according to article 51 of the UN Charter states can only use force in self-defence. How then can any action be taken without the consent of the state in cases where there is a great need for humanitarian assistance? Catherine Phuong gives somewhat an answer to this question in her book *Protecting the Internally Displaced*. According to her there are some arguments that, since 1945, a right to use force for humanitarian purposes has emerged in customary international law. Although state practice has increased during this period of time; humanitarian intervention has not yet been clearly established as a right under international law.⁸¹ There are a few SC Resolutions that back up Catherine Phuong's opinion and the SC has gone as far as declaring that the denial of humanitarian access to civilian populations may constitute a threat to international peace and security within the meaning of article 39 of the UN Charter.⁸² SC Resolution 688 did according to her break new ground by stating that the situation of the Kurds in Northern Iraq constituted a threat to international peace and security.⁸³ A more recent SC Resolution went further by declaring that the following types of situation may constitute threats to international peace and security:

The deliberate targeting of civilian population in an armed conflict.

The deliberate denial of humanitarian access to civilians,

And the situation where refugees and internally displaced persons are under the threat of harassment or where their camps are at risk of infiltration of armed elements.⁸⁴

5.2.2.1 Situations of intervention

According to the Internal Displacement Monitoring Centre (IDMC) the number of IDPs as a result of conflict in the world is 27,100,000 (estimate based on the analysis of available country figures and additional information on displacement and return trends).⁸⁵ Why does external intervention take place in some cases and not in others? As mentioned above the threat of refugee flow can be an important consideration in the decision to intervene. In accordance with that, intervention is more likely to take place security threats as refugee flows appear. It can also be argued that states only intervene in a crisis within a different state if

⁸¹ Phuong (2004) p. 220

⁸² Phuong(2004) p. 219-223.

⁸³ SC Res. 688, 5 April 1991

⁸⁴ SC Res. 1296, 19 April 2000

⁸⁵ Internal Displacement Monitoring Center: Global Statistics. Available at: [http://www.internal-displacement.org/8025708F004CE90B/\(httpPages\)/22FB1D4E2B196DAA802570BB005E787C?OpenDocument&count=1000](http://www.internal-displacement.org/8025708F004CE90B/(httpPages)/22FB1D4E2B196DAA802570BB005E787C?OpenDocument&count=1000)

they have an interest to do so, and therefore the issue of refugee flows connects humanitarian concerns with security issues because it provides a clear link between the two.⁸⁶ Alan Dowty and Gil Loescher have argued that refugee flow across a national border imposes increasing burdens and even threats on the countries of refuge. In their conclusion in their article: *Refugee Flows as Grounds for International Action*, they go even further and say that customary international law provides a basis for international action to prevent such flows as they are threats to peace and security. “Refugee flows also legitimize UN enforcement action under Chapter VII of the Charter, and that intervention in military and non-military forms is becoming a norm, albeit haltingly, in state declaration and practice.”⁸⁷ Myron Weiner puts it this way: “a country that forces its citizen to leave or creates conditions which induce them to leave has internationalized its internal actions... If a people violate the boundaries of a neighbouring country, then they and their government should expect others to intervene in their internal affairs.”⁸⁸ As mentioned in the chapter on state sovereignty, states and other organs (UN) cannot intervene unless they have the permission of the state in question; these scholars are of an opposite opinion. Especially John Chipman who argues that: “once the consequences of a policy enacted for domestic purposes become external, the policy itself is open to international comment and action, with proclamations of sovereign rights being no defence against outside interference.”⁸⁹ In 1998-99 terrible things occurred in Kosovo; crimes against humanity, massive expulsion and war crimes. NATO's decision to intervene by military forces was widely welcomed but also sharply criticized.⁹⁰ A few years later, while giving a speech, Prime Minister Tony Blair argued that: “when oppression produces massive flows of refugees which unsettle neighbouring countries then they can be properly described as threats against international peace and security.”⁹¹

A good example from the African region is the Democratic Republic of Congo (DRC). There troops of the UN peace-keeping mission (MONUC) can be deployed to areas where communities feel threatened by displacement. An intervention of this kind is often triggered by the Protection Cluster set up by the UN and comprises key humanitarian agencies and

⁸⁶ Phuong (2004) p. 221

⁸⁷ Dowty (1996) p.69

⁸⁸ Weiner (1993) p. 25, 26.

⁸⁹ Chipman (1992) p. 112

⁹⁰ Henkin (1999) p. 824-828

⁹¹ Blair (1999)

NGOs and is entrusted with identifying and addressing protection needs related to Internal Displacement.⁹²

5.3 Phase 3 – Returning

I am happy that we have finally come back home, home is home no matter how bad it looks to other people. My heart has always been here even if we have nothing to eat.
(Awien, a Sudanese returnee)⁹³

As earlier established, IDPs do not have the same rights as refugees to a refugee status in other countries. Therefore the need to return to their home is more essential than for many refugees because they cannot seek asylum in other countries. Returning is of course not always possible but this chapter will examine if IDPs have a legal right to return back to their previous homes and in which legal instruments this right is to be found.

5.3.1 The guiding principles

Principle 28 recognises that the responsibility and duty lies with the state or other competent authorities to establish conditions that will allow IDPs to either return voluntarily to their homes or places of habitual residence with dignity and in safety or resettle voluntarily in another part of the same country. The state shall further endeavour to facilitate the reintegration of returned or resettled IDPs. IDPs shall be able to participate in the planning and managing of their own return or resettlement and reintegration. Special efforts should be made to ensure that (Guiding Principle 28.1) Once IDPs have returned to their homes or in other parts of the country, they shall not be discriminated against on grounds of once having been displaced. They shall have the right to participate fully and equally in public affairs at all levels and have equal access to public services (Guiding Principle 29.1). Guiding Principle 29.1 reflects the great need for recognition of the rights of IDPs once they have returned to their homes (return) or found new homes (resettlement). There are various concerns related to return or resettlement of IDPs. There are often issues concerned with for example documentation, but many IDPs may lack documentation as they get lost. In Iraq, for example,

⁹² Brookings (2008) p. 24. English quote found in the Brookings Manual p. 24. Original Quote in: “Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kälin,” Addendum, Mission to the Democratic Republic of Congo, A/HRC/8/6/Add.3 (2008), paragraph 35 (available in French only).

⁹³ Garang (2010)

documentation is essential when it comes to the exercise of citizen rights such as voting and accessing basic services.⁹⁴ All problems are therefore not necessarily resolved once IDPs return or resettle as there can be hindrances when it comes to their participation in the society. Securing IDPs durable solutions when it comes to returning is not only in the best interest of the IDP but also in the best interest of the state as “leaving IDPs in continued marginalization without the prospect of a durable solution may become an obstacle to long-term peace stability, recovery and reconstruction in post-crisis countries.”⁹⁵

Often IDPs are forced to leave their homes and properties with little or no warning which leaves their physical belongings more vulnerable to thefts, destruction, or arbitrary seizure by authorities. Principle 21 of the Guiding Principles provides that IDPs shall not be arbitrarily deprived of property or possessions through pillage, direct or indiscriminate attacks or other acts of violence, being used to shield military operations or objectives, or being made the object of reprisals. Nor may their property be destroyed or appropriated as a form of collective punishment. According to Principle 29.2, competent authorities shall assist returnees and resettled IDPs to recover their property and possessions to the extent possible. Most importantly, competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation.

5.3.2 The Pinheiro Principles

Principle 10 of the Pinheiro Principles supports principle 28 of the Guiding Principles. Both demonstrate that the return of the IDPs has to be voluntary and must be based on free, informed, individual choice. The Pinheiro Principles go into greater depth when it comes to voluntary return of IDPs by stating that refugees and IDPs shall not be forced, or otherwise coerced, either directly or indirectly, to return to their former homes, lands or places of habitual residence. In paragraph 4, of the same principle, it says that states should request assistance, financial or technical, from other states when necessary to facilitate effective voluntary return of IDPs. It has already been established that the Pinheiro Principles are in no way hard law and therefore not legally binding. But in the Handbook on Housing and Property Restitution for Refugees and Displaced Persons, which also is a valuable guide on the Pinheiro Principles, it says the following on principle 10:

⁹⁴ The Internal Displacement Monitoring Centre. Returnees and IDPs face difficulties in registration and obtaining documentation required (2005-2009) Available at: [http://www.internal-displacement.org/idmc/website/countries.nsf/\(httpEnvelopes\)/67C2DA1FD6490365C1257520004C6DDA?OpenDocument](http://www.internal-displacement.org/idmc/website/countries.nsf/(httpEnvelopes)/67C2DA1FD6490365C1257520004C6DDA?OpenDocument)

⁹⁵ Brookings (2010)

The right to return to one's city or region for IDPs is well established under international law, including in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights; the Geneva Convention relative to the Protection of Civilian Persons in Time of War; the African Charter on Human and Peoples Rights and many others. Numerous UN Security Council and UN General Assembly resolutions have reaffirmed this principle when addressing specific cases of displacement.⁹⁶

5.3.3 International Human Rights

As mentioned earlier IDPs have the right to return according to various international legal instruments. But there is no specific provision in international covenants that specify that IDPs per se have the right to return but most international human rights instruments recognise the right to return to one's country.⁹⁷ According to international law, arbitrary transfer of population is not only a crime against humanity, but also provides for remedy for the persons victimised by these forced transfers. Those who have been forcibly transferred from their homes in violations of international standards are entitled to return to their home areas and property, a right known as "right to return".⁹⁸

Article 13 of the UDHR expresses the right of everyone to freedom of movement and residence within the borders of each state. Further everyone has the right to leave any country, including their own, and to return to their country. This can be interpreted as the right of IDPs to return back to their homes as they have the right to move freely and chose a residence within the border of the state they live in as well as returning to their country if they are displaced outside the country of their habitual residence.

Article 12 of the International Covenant on Civil and Political Rights (ICCPR) similarly expresses the right of everyone to move lawfully within the territory of a state and the liberty

⁹⁶ Housing and Property Restitution for Refugees and Displaced Persons; Implementing the "Pinheiro Principles". p. 54

⁹⁷ Internal Displacement Monitoring Centre. The right of IDPs to return home and property restitution. Available at: [http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/3DE5F4845EC54477C125711500483080/\\$file/Solutions%20module%20handout%20right%20to%20return.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/3DE5F4845EC54477C125711500483080/$file/Solutions%20module%20handout%20right%20to%20return.pdf)

⁹⁸ Internal Displacement Monitoring Centre. The right of IDPs to return home and property restitution. Available at: [http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/3DE5F4845EC54477C125711500483080/\\$file/Solutions%20module%20handout%20right%20to%20return.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/3DE5F4845EC54477C125711500483080/$file/Solutions%20module%20handout%20right%20to%20return.pdf)

of movement and freedom to choose their residence. This right can therefore be interpreted as the right of IDPs to move freely and choose to move back to their former homes which they were displaced from. This right shall, according to paragraph 3 of the same article, not be restricted except if necessary to protect national security, public order, public health or morals or rights and freedoms of others. The ICCPR therefore mentions exceptions to the right to return as there can be circumstances where return may not be possible.

These two articles might, as mentioned earlier, not secure IDPs the right to return but they too oblige states not to impede the return to the places of origin. The Sub-Commission on the Promotion and Protection of Human Rights has reaffirmed “the right of all refugees ...and internally displaced persons to return to their homes and places of habitual residence in their country and/or place of origin, should they so wish.” (Resolution 1988/26) The UN Security Council stated in its resolution 820 (1993) dealing with Bosnia and Herzegovina that “all displaced persons have the right to return in peace to their former homes and should be assisted to do so.” Other Security Council resolution back this up, such as resolutions addressing the conflicts in Abkhazia and Georgia, Azerbaijan, Cambodia, Croatia, Cyprus, Kosovo, Kuwait, Namibia and Tajikistan.⁹⁹

It is hard to imagine that IDPs right to return is easy in practice. As demonstrated in a report from the NRC from 2009¹⁰⁰ there are still approximately 114,000 IDPs in Bosnia and Herzegovina and 19,000 in Kosovo. “The Representative of the UN Secretary-General on the Human Rights of IDPs has promoted three durable solutions which as a matter of principle should be sought by the competent authorities. He has made clear that states have a duty to establish conditions and provide the means which would allow the displaced persons to enjoy one of the following options:

- Voluntary return: that the IDPs return to their homes or places of habitual residence in safety and with dignity;
- Voluntary resettlement: that they resettle in another part of the country; and

⁹⁹ Internal Displacement Monitoring Centre. The right of IDPs to return home and property restitution. Available at: [http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/3DE5F4845EC54477C125711500483080/\\$file/Solutions%20module%20handout%20right%20to%20return.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/3DE5F4845EC54477C125711500483080/$file/Solutions%20module%20handout%20right%20to%20return.pdf)

¹⁰⁰ Internal Displacement Monitoring Centre. Internal Displacement: Global Overview of Trends and Developments in 2009. Available at: [http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/4FD73C15BC9840EEC1257726002011EE/\\$file/Global%20Overview%202009%20fact%20sheet.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/4FD73C15BC9840EEC1257726002011EE/$file/Global%20Overview%202009%20fact%20sheet.pdf)

- Integration locally: that they get support for their choice to stay in the community where they are and integrate there.¹⁰¹

These durable solutions are reflected in the Principle 28 as earlier mentioned.

Recognising these various rights, the Sub-commission on the Promotion and Protection of Human Rights has reaffirmed “the right of all refugees ...and internally displaced persons to return to their homes and places of habitual residence in their country/or place of origin, should they so wish” in Resolution 1998/26.

5.3.4 International Humanitarian Law

There is only one rule under IHL which provides that persons who have been evacuated from an occupied territory shall be transferred back to their homes as soon as hostilities in that area have ceased. This rule is to be found in article 49.2 of the Geneva Convention IV which says that: “persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased”.

¹⁰¹ Council of Europe: Commissioner for Human Rights. (2008)
http://www.coe.int/t/commissioner/Viewpoints/080915_en.asp

6. Conclusion

Legal documents that specifically refer to IDPs are few and young in age. In fact there is only one legal document that specifically outlines the protection of IDPs and that is the Kampala Convention, as the Guiding Principles are not a legal document. When referring to laws on humans and laws on refugees, the following expressions are used: human rights laws and refugee laws. The term IDP laws have on the other hand not yet been developed as there are no hard IDP laws. The Kampala Convention and the Guiding Principle list various rights that IDPs are entitled to but the Kampala Convention has yet to come into force and the Guiding Principles are not laws as such. IDPs have therefore, until today, not been able to rely on specific laws that address the issue. On the other hand, IDPs are protected by various legal instruments that entitle them the right to food, water, housing, education etc as described in various international human rights instruments. Their right to adequate housing is enshrined in numerous legal documents such as the UDHR, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, Convention on the Elimination of All Forms of Discrimination Against Women and the Convention on the Rights of the Child. Most importantly persons have the right to be protected against arbitrary displacement. When displacement cannot be avoided IDPs have various rights, most significantly according to IHL. IDPs then have the right to return, a right that is enshrined in the Kampala Convention, the Guiding Principles and most significantly the Geneva Convention IV. IDPs shall, according to the Geneva Conventions and the Addition Protocols be protected on all three stages of displacement. The Geneva Conventions and the Additional Protocols have been ratified by a large number of states and have been in force for a very long time; the Geneva Conventions as of 1949 and the Additional Protocols as of 1977. They are therefore the legal instruments that IDPs in war and conflict zones can rely on the most for now. It can therefore be concluded that IDPs have the same rights and everyone else according to human rights laws and rights to protection according to IHL.

Bibliography

Books

Goodwin-Gill, Guy S. and Jane McAdam. *The Refugee in International Law*. 3rd edition. Oxford (Oxford University Press) 2007

International Law. 2nd edition. Edited by Malcolm D. Evans. Oxford (Oxford University Press) 2006.

Loescher, Gil, Alexander Betts and James Milner. *The United Nations High Commissioner for Refugees (UNHCR): The politics and practice of refugee protection into the twenty-first century*. New York (Routledge) 2008.

Phuong, Catherine. *The International Protection of Internally Displace Persons*. Oxford (Oxford University Press) 2004

The Handbook of International Humanitarian Law. 2nd edition. Edited by Dieter Fleck. Oxford (Oxford University Press) 2008.

Articles and Papers

Chipman, John. *The Future of Strategic Studies: beyond even grand strategy*. Survival, vol. 34, no. 1, Spring 1992, p. 110-131. 1992

Dowty, Alan and Gil Loescher. *Refugee Flows as Grounds for International Action*. In: International Security. Vol. 21 No. 1. Cambridge (MIT Press) 1996. Available at: <http://www.jstor.org/stable/2539108>

Henkin, Louis. *Kosovo and the Law of "Humanitarian Intervention"*. In: The American Journal of Humanitarian Law. Vol 93, No. 4. 1999. New York (American Society of International Law) 1999

Human Rights Watch. *Hidden in plain View: Refugees Living Without Protection in Kampala and Nairobi*. New York (HRW) 2002.

Lanz, D. *Subversion or Reinvention? Dilemmas and Debates in the Context of UNHCR's Increasing Involvement with IDPs*. Journal of Refugee Studies, Vol. 21 No.2, 192–209. 2008

Oloka-Onyango J, *Forced Displacements and the Situation of Refugees and Internally Displaced Women in Africa*. East African Journal of Peace and Human Rights, Vol. 5 No.1, 1998

Mattar, Vanessa and Paul White. *Consistent and Predictable Responses to IDP's – A Review of UNHCR's Decision-making Processes*. 2005. United Nations High Commissioner for Refugees Evaluation and Policy Analysis Unit, EPAU/2005/2. Available at: [http://www.internal-displacement.org/8025708F004CFA06/\(httpKeyDocumentsByCategory\)/22E0FEBA621777AF802570A000343E1B/\\$file/unhcr_response_2005.pdf](http://www.internal-displacement.org/8025708F004CFA06/(httpKeyDocumentsByCategory)/22E0FEBA621777AF802570A000343E1B/$file/unhcr_response_2005.pdf)

Udombana, Nsongurua J. *When Neutrality Is a Sin: The Darfur Crisis and the Crisis of Humanitarian Intervention in Sudan*. In: Human Rights Quarterly Vol. 27. Number 4. Baltimore (The Johns Hopkins University Press) 2005

Weiner, Myron. *Introduction: Security, Stability and International Migration*. In Myron Weiner, ed., *International Migration and Security*. p. 1-35. Boulder (Westview Press) 1993

Zard, Monette. *Towards a Comprehensive Approach to Protecting Refugees and the Internally Displaced*. In: Human Rights and Refugees, Internally Displaced Persons and Migrant Workers: Essays in Memory of Joan Fitzpatrick and Arthur Helton. Leiden (Martinus Nijhoff) 2006

Reports and Other Documents

Blair, Tony. *Doctrine of the International Community*. Speech at the Economic Club, Chicago, 24 April, 1999.

Brookings-Bern Project on Internal Displacement. *ISAC Framework on a Durable Solution for IDPs*. 2010. Available at: http://www.brookings.edu/reports/2010/04_durable_solutions.aspx [Last visited 30 November 2010]

Brookings-Bern Project on Internal Displacement. *Protecting Internally Displaced Persons: A Manual for Law and Policymakers*. 2008.

Handbook. *Housing and Property Restitution for Refugees and Displaced Persons: Implementing the "Pinheiro Principles"*. Published by OCHA/IDD, UN HABITAT, FAO, OHCHR, NRC and the NRC Internal Displacement Monitoring Centre. 2007.

International Commission on State Sovereignty. *The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty*, xi). 2001. Available at: www.iciss.ca/pdf/Commission-Report.pdf [Last visited 16 December 2010]

Internal Displacement, Global Overview of Trends and Developments in 2008. Edited by Edmund Jennings and Nina M. Birkeland. Geneva, (Internal Displacement Monitoring Centre and Norwegian Refugee Council) 2009.

Internal Displacement Monitoring Centre. *The right of IDPs to return home and property restitution*. Available at: [http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/3DE5F4845EC54477C125711500483125/\\$file/Solutions%20module%20handout%20right%20to%20return.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/3DE5F4845EC54477C125711500483125/$file/Solutions%20module%20handout%20right%20to%20return.pdf) [Last visited 15 December 2010]

Norwegian Refugee Council: Comprehensive Refugee Policy.

Secretary-General to the Security Council. *Report on the Protection of Civilians in Armed Conflict*, S/2001/331, 30 March 2001. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N01/300/30/PDF/N0130030.pdf?OpenElement>

United Nations High Commissioner for Refugees. *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*. 1992

United Nations High Commissioner for Refugees. *Internally Displaced Persons: The Role of the High Commissioner for Refugees*. UN doc. E/50/SC/INF.2, 20 Jun. 2000.

Treaties/Statutes/Resolutions

African Charter on Human and Peoples Rights adopted 27th June 1981, entry into force 21 October 1986

African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa.(Kampala Convention) Adopted 23 October 2009.

Charter of the United Nations, signed on 26th June 1945
Universal Declaration of Human Rights, adopted by General Assembly Resolution 217A (111) of 10th December 1948 59

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, signed on 10th December 1984, entry into force 26th June 1987

Convention on the Rights of the child, signed 20th November 1989, entry into force 2nd September 1990

Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) signed 18th December 1979, entry into force 3rd September 1981

Convention relating to the status of refugees, signed on 28th July 1951, entry into force 22 April 1954

International Covenant on Civil and Political Rights (ICCPR) adopted by UN General Assembly Resolution 2200/A (xxi) of December 1966 entry into force 3rd January 1976

International Law Commission's Articles on state responsibility for internationally wrongful Acts, signed 10th August 2001

OAU Convention Governing Specific Aspects of Refugee Problems in Africa adopted by the Assembly of Heads of State and Government at its Sixth Ordinary Session 10th September 1969, entry into force 20th June 1974

Protocol relating to the status of refugees, signed on 31st January 1967, entry into force 4th October 1967

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977.

Statute of the Office of the United Nations High Commissioner for Refugees. Adopted by the UN General Assembly, 14 December 1950.

The Guiding Principles on Internal Displacement, United Nations Commission on Human Rights, Addendum to the Report of the Representative of the Secretary-General, Mr. Francis M. Deng, UN Doc. E/CN.4/1998/53/Add. 2, February 11, 1998.

UN Declaration on Elimination of Violence against Women, adopted by General Assembly 48/104 of 20th December 1993

UN High Commissioner for Refugees, *The Protection of Internally Displaced Persons and the Role of UNHCR*. 27 February 2007. Available at:
<http://www.unhcr.org/refworld/docid/45ddc5c04.html> [Last visited 10 December 2010]

U.N. Security Council, 2982nd meeting . “Resolution 688(1991)[Concerning the repression of the Iraqi civilian population].“ (S/RES/0688) 5 April 1991.

U.N. Security Council, 40th46 meeting . “Resolution 1265(1999)[On the Protection of Civilians in armed conflicts].“ (S/RES/1265) 17 September 1999.

U.N. Security Council, 4130th meeting . “Resolution 1296(2000)[On the Protection of Civilians in armed conflicts].“ (S/RES/129) 19 April 2000.

Vienna Convention on the law of treaties, signed on 23rd May 1969, entry into force 27th January 1980

International Court Decisions

Nicaragua v United States. International Court of Justice, The Hague, 27 June 1986.

Internet Resources

ACP-EU Joint Parliamentary Assembly. *Report on the Legal Status of Internally Displaced Persons in the ACP States*. 2010.
http://www.europarl.europa.eu/intcoop/acp/10_01/pdf/825009en.pdf [Last visited 11 November 2010]

Bagshaw, Simon and Diane Paul. *Protect or Neglect – Toward a more effective United Nations Approach to the Protection of Internally Displaced Persons*. 2005.
http://www.brookings.edu/papers/2004/1123humanrights_bagshaw.aspx [Last visited 15 November 2010]

Council of Europe: Commissioner for Human Rights. *Persons Displaced During Conflicts have the Right to Return*. 2008. http://www.coe.int/t/commissioner/Viewpoints/080915_en.asp [Last visited December 15 2010]

Friends of the United Nations. *Increasing number of Somali IDPs*. 2010.
<http://www.fotuneurope.org/?p=1180> [Last visited 20 September 2010]

Gabaudan, Michael. *African Leaders Must Follow Through on Kampala Convention*. 2010.
http://www.huffingtonpost.com/michel-gabaudan/african-leaders-must-foll_b_774844.html
[Last visited 15 November 2010]

Gargang, Ngor Arol. *Abyei receives first batch of IDPs returning from north Sudan*.
<http://www.sudantribune.com/Abyei-receives-first-batch-of-IDPs,37024> [Last visited 25
November 2010]

Internal Displacement Monitoring Center. *Global Statistics*. [http://www.internal-displacement.org/8025708F004CE90B/\(httpPages\)/22FB1D4E2B196DAA802570BB005E787C?OpenDocument&count=1000](http://www.internal-displacement.org/8025708F004CE90B/(httpPages)/22FB1D4E2B196DAA802570BB005E787C?OpenDocument&count=1000) [Last visited 25 August 2010]

Internal Displacement Monitoring Centre. *Internal Displacement: Global Overview of Trends and Developments in 2009*. [http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/4FD73C15BC9840EEC1257726002011EE/\\$file/Global%20Overview%202009%20fact%20sheet.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/4FD73C15BC9840EEC1257726002011EE/$file/Global%20Overview%202009%20fact%20sheet.pdf) [Last visited December 15 2010]

Internal Displacement Monitoring Centre. *The Kampala Convention: Making it real*.
<http://www.internal-displacement.org/kampala-convention> [Last visited 25 August 2010]

Kälin Walter. *How Hard is Soft Law? The Guiding Principles on Internal Displacement and the Need for a Normative Framework*. 2001.
<http://www.brookings.edu/fp/projects/idp/articles/Kaelin12-19-01.pdf> [Last visited 29
November 2010]

Office of the United Nations High Commissioner for Human Rights. *Introduction to the mandate of the Special Rapporteur of internally displaced persons, Dr. Chaloka Beyani*.
<http://www2.ohchr.org/english/issues/idp/mandate.htm>. 2010. [Last visited 12 December 2010]

Office of the United Nations High Commissioner for Human Rights. *Question and Answers about IDPs*. <http://www2.ohchr.org/english/issues/idp/issues.htm> [Last visited 12 December 2010]

Ojedas Stephane, *The Kampala Convention on Internally Displaced Persons: Some International Humanitarian Law Aspects*. <http://rsq.oxfordjournals.org/content/29/3/58.full>
[Last visited 22 July 2010]

Solomon, Andrew. *African Solution to Internal Displacement: AU Leaders Agree to Landmark Convention*. 2009.
http://www.brookings.edu/papers/2009/1023_african_union_solomon.aspx [Last visited 22
July 2010]